

REMARKS

Reconsideration of the above-identified application is respectfully requested.

The Examiner notes that the "listing of references in the specification is not a proper information disclosure statement." (1) Applicants did not "list" prior art in the specification. References to the prior art were included in a narrative. (2) Applicants complied with MPEP §608.01(c), which says that "The Background of the Invention ordinarily comprises ... paragraph(s) describing to the extent practical the state of the prior art or other information disclosed known to the applicant, *including references to specific prior art* or other information where appropriate" [emphasis added]. If the Examiner chooses to ignore portions of the specification, so be it. Such is not seen as consistent with Rule 104(a)(1), which provides that "On taking up an application for examination ..., the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention." The Rules of Practice take precedence over the MPEP.

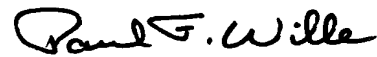
Claims 1–10 were rejected as unpatentable over the Uchino et al. published application. Applicants' invention relates to matching comfort noise to the sounds of an individual telephone call. The published application is concerned with generating a timing signal whose frequency is not stable within known limits. Contrary to the Examiner's assertion concerning claim 6, there is no disclosure of a telephone in the published application. A "digital line" is not a telephone. Although patent examiners are not ones of ordinary skill in the art, "Office personnel must always remember to use the perspective of one of ordinary skill in the art. Claims and disclosures are not to be evaluated in a vacuum" MPEP §2106.

Claim 1 has been amended to tie the comfort noise to the signal in a channel of a telephone. The published application does not even disclose the preamble of claim 6. As such, it is respectfully submitted that claims 1–10 distinguish over the published application.

The prior art not applied has been considered. This prior art does not disclose controlling the amplitude of filtered white noise in accordance with a signal in a corresponding sub-band.

In view of the foregoing remarks, it is respectfully submitted that claims 1–10 are in condition for allowance and a Notice to that effect is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul F. Wille". The signature is written in a cursive, flowing style.

Paul F. Wille

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